

CASE NO.: HSJ920030068US1
Serial No.: 10/615,965
December 13, 2005
Page 8

PATENT
Filed: July 9, 2003

Remarks

Reconsideration of the above-captioned application is respectfully requested. Claims 1-9, 11-20, 22-31, and 33 have been rejected under 35 U.S.C. §103 as being unpatentable over Sako et al., USPP 2003/0012099 in view of Rogoff et al., USPP 2002/0037081, and Claims 10, 21, and 32 have been rejected as being unpatentable over these references and further in view of "official notice"

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed.

Original independent Claims 1 and 11 respectively recite permitting only the digital-to-analog circuitry to access the analog-only read portion for converting digitized multimedia stored in the analog-only read portion to analog format, and always and under all circumstances converting the digital multimedia in the restricted area to analog format prior to permitting a client device to access content embodied by the multimedia. Independent Claim 22 has been amended to specify that no digital output path exists on the multimedia storage device from the restricted area except a path connecting the portion to the digital-to-analog circuitry as formerly recited in now-canceled dependent Claim 26. Claims 1-25 and 27-32 remain pending.

The rejections readily admit that the primary reference fails to teach allowing only the DAC to access the relied-upon restricted area (3), and further that the restricted area (3) is an analog-only read portion, proposing to add the secondary reference to supply the shortfall.

No portion of Rogoff et al. has been identified in the Office Action to support the allegation that Rogoff et al. teaches providing video output in analog format, to prevent easy access. As best discerned by

1189-6.AMD

CASE NO.: HSJ920030068US1

Serial No.: 10/615,965

December 13, 2005

Page 9

PATENT
Filed: July 9, 2003

Applicant, it appears that the examiner is relying on paragraph 4 of Rogoff et al., teaching that analog signals only are output from DVDs. No other allegation has been made respecting the teachings of Rogoff et al.

The problem is that reading the references in the light most favorable to the examiner's position, the invention of the independent claims would not result, for several reasons. First, as indeed recognized in the rejections, Sako et al. teaches allowing only *copying* of analogized data in the restricted portion, and Rogoff et al. teaches only *outputting* analogized data from the restricted region - but neither reference teaches permitting ONLY a DAC to access a restricted region (Claim 1) or always and under all circumstances converting the digital multimedia in the restricted area to analog format prior to permitting a client device to access content embodied by the multimedia (Claim 11) or providing no digital output path on the multimedia storage device from the restricted area except a path connecting the portion to the digital-to-analog circuitry (Claim 22). These limitations are not hinted at in either reference. It is entirely possible for both references to function as taught in the references without the presently claimed features. For instance, each reference could permit a digital component to access the restricted region as far as the teachings of the references are concerned, with the controller simply being programmed to prohibit copying of digitized data or outputting of digitized data.

In fact, this is precisely how Sako et al. appears to work, see figure 6 of Sako et al.; see also figure 11 of Sako et al., showing components other than a DAC connected to what appears to be all regions including the restricted region, *cf.* Claims 4, 8, and 9.

Accordingly, the statement that since it is legally permissible to combine the references as proposed, "it would have been obvious... to configure the Sako controller in a manner that only the D/A is permitted to access" the restricted area is a *non-sequitur*, because both references could function just fine if components

1189-6,AMD

CASE NO.: HSJ920030068US1
Serial No.: 10/615,965
December 13, 2005
Page 10

PATENT
Filed: July 9, 2003

other than the DAC accessed the areas and because neither reference suggests otherwise. Indeed, to the extent that any *apropos* prior art teaching exists in the relied-upon references, it is that components *other than* a DAC appear to be able to access all regions, including the relied-upon restricted regions. As stated above, both references could function (and it appears that Sako et al. in fact does function) using programmatic restrictions (e.g., by programming the controller to prohibit digital copying, but not digital reading, of a restricted region) as opposed to physical restrictions (e.g., allowing only a DAC to access a restricted area as recited in Claim 1). Consequently, allowing only the DAC to access the restricted region as set forth in Claim 1 is neither inherent in either reference (MPEP §2112 requires an inherent feature to *necessarily* be present in a reference) nor taught or suggested by either reference as essentially conceded in the Office Action.

The limitation of Claims 10, 21, and 32 based on official notice are traversed. MPEP §2144.03 advises that the taking of official notice can be taken only of facts that "are capable of instant and unquestionable demonstration as to defy dispute", giving, as examples, adjusting flame intensity as needed for heat and tape recorders automatically erasing old data when new data is recorded onto them. Official notice of dependent claim limitations "might be appropriate" but only if the facts so noticed "are of notorious character".

Accordingly, official notice "is permissible only in some circumstances", and should be "rare" in final rejections. In any case, according to the MPEP official notice is most inappropriate of technical facts in areas of esoteric technology or of specific knowledge of the prior art. Still further, "ordinarily there must be some form of evidence in the record to support an assertion of common knowledge", and "general conclusions

1189-6.AMD

CASE NO.: HSI920030068US1
Serial No.: 10/615,965
December 13, 2005
Page 11

PATENT
Filed: July 9, 2003


concerning what is basic knowledge without specific factual findings will not support an obviousness rejection."

It must be noted in addition that the question is not just whether various elements are well known, but also where the prior art supplies the motivation to combine the allegedly well-known features with the rest of the claimed elements. That is, regardless of how an element is identified in the prior art, i.e., using a reference or "official notice", the remaining task for an examiner is to show why the prior art suggests the element in the combination claimed.

For each and every taking of official notice, should the rejections be persisted in Applicant hereby requests not only a prior art showing under MPEP §2144.03 but also the requisite prior art suggestion to combine the allegedly well-known feature in the combination being rejected. Applicant explicitly traverses the taking of official notice for failing to comply with the above requirements of the MPEP, because (1) Applicant does not believe that rendering data stored in the restricted area effectively inaccessible is of so notorious a character as to be capable of instant and unquestionable demonstration as to defy dispute, and (2) in any case no prior suggestion has been identified to combine the allegedly well-known fact, shorn of evidentiary support as it is, with the remaining elements of the claimed combination.

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,


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1189-6.AMD